



REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 1ST JULY 2014

**SUBJECT: TRADING STANDARDS ENFORCEMENT OF AGE RESTRICTED
PRODUCTS LEGISLATION 2013-2014**

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To update Members on enforcement work undertaken by the Trading Standards Service in relation to the under age supply of alcohol, tobacco, and fireworks.
- 1.2 To provide an annual report to Members, as required by legislation, on enforcement activity in relation to tobacco and aerosol spray paints
- 1.3 To inform members of forthcoming changes in tobacco control legislation and highlight the increase in prevalence of illicit tobacco products.

2. SUMMARY

- 2.1 This report details the nature and number of complaints received concerning under-age sales of alcohol, tobacco and fireworks over the previous financial year. An overview of test purchasing activity is provided including the results of enforcement action and the penalties that may be applied.
- 2.2 The Authority is required by law to annually review its approach to tackling under-age sales of tobacco and spray paints. As no intelligence was received relating to the supply of spray paints from specific premises no enforcement action was taken. Suppliers were however visited and advised on preventing under age sales.
- 2.3 During the financial year 2013/2014 the Trading Standards Service received 53 complaints about underage sales of products. 77 test-purchasing attempts were made of which there were sales in 5 cases. During 2013/14 2 prosecutions were heard, both cases initiated in the previous financial year and 2 are currently in the Court system. 4 Penalty Notices for Disorder were issued.
- 2.4 Preventative activity is described, covering campaigns for age-restricted products and in particular alcohol, aimed at sellers, buyers and the public in general. A summary of future proposed legislation in the area of tobacco control is also provided.

3. LINKS TO STRATEGY

- 3.1 The enforcement of age-restricted legislation contributes to the Healthier Caerphilly, Safer Caerphilly, and Learning Caerphilly priorities within the Caerphilly Local Service Board single integrated plan, Caerphilly Delivers, and Objective 1 of the Council's Strategic Equality Plan

2012.

4. THE REPORT

4.1 Complaints and Enforcement Exercises

Complaints about premises supplying age-restricted products are received from members of the public, local elected Members, Police Officers, Community Safety Wardens, and other businesses. Complaints data is used to target enforcement activities and also to support authorisations for directed surveillance using covert recording equipment, under the Regulation of Investigatory Powers Act 2000. During the financial year 2013/2014 the Trading Standards Service received:

- 0 complaints about tobacco sales
- 9 complaints about premises selling alcohol and tobacco
- 11 complaints about “on” licence alcohol sales
- 33 complaints about “off” licence alcohol sales
- 0 complaints about aerosol spray paints
- 0 complaints about the supply of butane lighter refills
- 0 complaints about the supply of lottery tickets

4.1.1 A number of the complaints concerning the supply of alcohol to under 18s from off licences also contained further information that “proxy” sales were taking place at the premises. Proxy sales occur where an adult buys alcohol on behalf of a child. Where the seller ‘knows’ a proxy sale is being requested they commit an offence if they allow a sale to go ahead.

4.1.2 In the previous financial year the service has carried out test purchases for alcohol, tobacco, and fireworks. Test purchasing is achieved by using young volunteers selected in accordance with national guidelines. The volunteers, who often work in pairs, carry covert recording equipment, which captures sound and images. If a sale is made the recording is used to support enforcement action. Where volunteers are test purchasing in “on” licence premises support is provided by a witnessing team of officers, including officers from Gwent Police, in order to secure the health and safety of the young people in an adult environment. All activities are risk assessed and parental consent is required before a volunteer is allowed to work with the Trading Standards Service.

4.1.3 Test purchasing is prioritised towards those products that cause most concern for local residents. During the financial year activity focused on alcohol, tobacco and fireworks, as these are the products that either carries risks of anti-social behaviour or health concerns for young people.

YEAR	13/14		12/13	11/12
Product	Sales/ Attempts	% Sales	% Sales	% Sales
Alcohol On	3/6	50%	21.4%	30%
Alcohol Off	2/45	4.4%	13.2%	18%
Tobacco	0/20	0%	16.7%	14%
Fireworks	0/8	0%	33.3%	0%

4.1.4 During 2013/2014 Trading Standards received 4 complaints about “proxy” sales of alcohol. Where complaints are received about proxy sales it is often the case that the premises are believed to be deliberately selling alcohol to local youths or are not preventing local youths from obtaining alcohol via proxy sale. Usually the youths approach adults outside the store to ask them to purchase. In such cases the shop may not be acting deliberately and are therefore unlikely to sell to Trading Standards volunteers. In tackling the proxy sale problem it is necessary to work in partnership with Gwent Police utilising surveillance via CCTV, and

officers with stop and search powers to seize the alcohol from youths and establish the dispersal routes away from the premises. Such exercises are complex to set up and also costly in terms of police and local authority resources. However, given the levels of anti-social behaviour associated with such complaints they are prioritised wherever possible.

4.1.5 There is no equivalent “proxy” sales offence for the supply of tobacco although the Welsh Government has undertaken to look into the possibility of creating one.

4.2 Legislation and Penalties

4.2.1 The Children and Young Persons (Protection from Tobacco) Act 1991 requires the authority to consider its enforcement programme in respect of under age sales of tobacco on an annual basis. The Clean Neighbourhoods and Environment Act 2005 places a duty on the authority to consider activity regarding the under-age sales of aerosol spray paints

4.2.2 Where alcohol is sold it is likely that the staff member will receive a £90 on the spot penalty notice issued by a Trading Standards Officer. The owner/seller of the alcohol will be investigated formally and unless the business has an adequate defence it is likely that they will be prosecuted in court. The maximum fine under the Licensing Act 2003 is £5000.

If it is deemed likely that the premises may not improve their systems the licence may be taken to review before the Licensing Committee. The Committee has a number of options open to it: -

- Impose additional conditions
- Remove the designated premises supervisor (responsible person named on the licence)
- Suspend the licence for up to three months.
- Revoke the licence

4.2.3 Where tobacco is sold both the staff member and the business owner may be liable to court action unless there is an adequate defence in place. The maximum fine is £2,500. In the case of fireworks the maximum penalty is £5000 and six months imprisonment.

4.2.4 Results for the preceding 12 months (which may have included cases from the preceding financial year) are shown in the table below.

Type of Enforcement Activity	Alcohol	Tobacco	Fireworks
Failed test purchases	5	0	0
Prosecutions	2*	0	0
£80 Fixed Penalty Notices for Disorder	4	Not applicable.	
Reviews of Licence	1	Not applicable	

*The results from proceedings in relation to 3 sales are still awaited

4.3 New and Future Legislative Proposals

4.3.1 Tobacco advertising and promotion was banned in 2004 and the smoking ban was implemented in Wales in 2007. In December 2012, Regulations controlling the display of tobacco products were introduced in Wales for stores over 280 square metres of floor space (generally large supermarkets) who are only able to display tobacco products temporarily and in specific circumstances-

- Following requests to buy or view tobacco by customers over 18 (age checks must be carried out before showing them the tobacco product)
- Incidental displays while staff are: restocking, assessing stock levels, cleaning, maintaining or refurbishing the storage unit or undertaking staff training
- In specified circumstances by bulk tobacconists or specialist tobacconists
- Following a request by an enforcement officer.

Smaller stores have until 2015 to comply with these Regulations.

- 4.3.2 The Trading Standards Service enforces these provisions, with the large National retailers being fully compliant. Increased intervention may be required when small retailers are covered by the legislation, as they may not have the financial resources to adapt their tobacco displays.
- 4.3.3 Plans to introduce plain packaging of cigarettes are still being considered by the UK Government.
- 4.3.4 The last five years or so have seen the emergence of a range of electronic nicotine delivery systems (ENDS), the most common being the electronic cigarette or e-cigarette. Originally driven by the 2007 ban on smoking in enclosed public places, the market has developed from relative simplicity to one of great diversity of products both in terms of the products available, and their means of supply. A major area of concern is the lack of regulation of the ENDS market with regard to the age of the purchaser. Currently, a child could quite legitimately purchase and use an electronic cigarette despite the inherent danger of high concentrations of nicotine being placed into the hands of youngsters. Given the highly addictive nature of nicotine, it is of particular concern that some of the scented or fruit flavoured refills could encourage a whole new generation of youngsters to take up smoking. This would be a devastating blow after the great strides in reducing the levels of underage sales of tobacco in Wales over the last decade. Legislation restricting the age of purchase to those over 18 is expected and the Welsh Government White Paper- Listening to you: Your health matters, is consulting on including e-cigarettes in the ban on smoking in enclosed public places.

4.4 Regulation of Investigatory Powers Act 2000, Protection of Freedoms Act 2012

- 4.4.1 On 1 November 2012, the Protection of Freedoms Act 2012 changed the way in which Local Authorities conduct certain surveillance activities. Surveillance, the use of “undercover” officers and other legitimate methods used by law enforcement bodies has been strictly controlled by The Regulation of Investigatory Powers Act 2000. The Act introduced a strict regime of internal checks and balances prior to conducting surveillance, to ensure that any interference with individual’s Human Rights were for the purpose of preventing and detecting crime and was both necessary and proportionate.
- 4.4.2 Since November Local Authority law enforcers carrying out surveillance activities have to be internally authorised and obtain Judicial Approval from the Courts. The new system has had an impact on the number of test purchase attempts made in 2013/14 along with a reduction in complaints and intelligence received. The latter however could be regarded as a positive outcome due to the previous and ongoing work done by the Service in attempting to restrict the availability of alcohol and tobacco to children.

4.5 Illicit tobacco products

- 4.5.1 An increasing problem for Trading Standards is the supply of “illicit tobacco” through totally unregulated sources, such as private houses and itinerant street peddlers. Such sellers do not have any controls on the age of purchasers and the products are either counterfeited or “illicit whites”, cigarettes made outside the UK specifically to be smuggled into the country. These products are manufactured with little or no controls in relation to quality and subsequently the yields of tar, nicotine and other toxins are far higher than legitimate products. The very low price of the products does little to assist smokers to give up the habit, and there are no controls over the sale to children, as the trade is completely illegal. Due to health and safety

concerns, it is not possible to use under age volunteers to test purchase the products from private dwellings.

- 4.5.2 In 2013/14 Trading Standards employed the services of BWY Canine, an accredited Dog Handler who utilises a Tobacco Detection Dog for the purposes of locating concealed tobacco and cigarettes. During a warrant executed at a private dwelling the dog located Hand Rolling Tobacco that was hidden behind plinth boards in the kitchen of the occupier's house. BWY Canine also assisted on an Illicit Tobacco survey at retail premises across the Borough where a further supply of counterfeit tobacco was identified on sale. The use of the detection dogs during the warrant and the work of the service also featured in a Wales This Week programme on Illicit Tobacco.
- 4.5.3 Trading Standards have powers under legislation to fight the supply of illicit and counterfeited tobacco and a number of operations were undertaken in the last year targeting these sellers, resulting so far in convictions against 4 suppliers with further investigations ongoing.

4.6 **Preventative Activity**

- 4.6.1 Prevention is an important aspect of the work of the Trading Standards Service and is focussed at all the points of supply, with the youths themselves, with adults who may purchase alcohol on their behalf, and with the retailers.

Young People

Trading Standards currently issues around 2000 Home Office accredited proof-of-age (Validate) cards free of charge to 16 year olds within every secondary school. Systems are also in place to issue the cards to those young people not in employment, education or training. Cards are also issued free of charge via main Police Stations.

In 2013/14 approximately 2000 schoolchildren attended Crucial Crew, the Year 6 safety awareness event; where advice is given to children by Trading Standards Officers on age-restricted products. Trading Standards also focus on the consequences of alcohol misuse and under-age drinking at Drug and Alcohol days organised by Gwent Police in secondary schools. Additionally the Service responds to requests from individual schools or youth groups to deliver educational talks on age restricted products.

Adult Purchasers

Trading Standards support the police in operations on proxy sales of alcohol. However the introduction of the new controls on surveillance in November 2012 (see paragraph 4.4) removed the ability for local authorities to utilise surveillance for proxy sales operations.

Retailers

A trader advice pack, "No Proof No Sale", is used to highlight the need to implement preventative systems, including staff training, at premises. The pack is available on-line and also as an Urdu translation. The pack is used at all Trading Standards inspections and dedicated advice visits are also undertaken whenever a new person takes over control of a licensed premise.

A poster campaign has been used in on licensed premises warning bar staff how easy it is to fail to identify the correct age of purchasers. As well as posters, till and shelf edge stickers have been distributed which warn staff that they face an £80 on the spot penalty if they are found supplying alcohol to under 18.

Seminars have been provided tailored to specific sectors of the alcohol supply trade e.g. bar staff, private members clubs, off licence managers and off licence staff. In the case of off licence staff the training included conflict management in refusing sales and dealing with difficult customers.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan.
- 5.2 Equalities Impact Assessments would be undertaken on specific action plans and projects related to Trading Standards work.

6. FINANCIAL IMPLICATIONS

- 6.1 Activity is managed within existing budgets.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications.

8. CONSULTATIONS

- 8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

Members note the content of the report.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To apprise members of activities undertaken in this area aimed at preventing access to all age restricted products.
- 10.2 To ensure that the Authority complies with its legal obligation to annually review its approach in relation to tobacco and Spray paints.

11. STATUTORY POWER

Children and Young Persons (Protection from Tobacco) Act 1991*
Clean Neighbourhoods and Environment Act 2005*
Children and Young Persons (Sale of Tobacco etc) Order 2007
Licensing Act 2003
Gambling Act 2005
Pyrotechnic Articles (Safety) Regulations 2010
Regulation of Investigatory Powers Act 2000
National Lottery etc Act 1993
Protection of Freedoms Act 2012

* Require an annual consideration of approach

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Cllr. D.T. Davies, Chair Regeneration & Environment Scrutiny
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Background Papers: None.